

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

ELAINE L. CHAO, Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

SOS SECURITY SERVICE, INC., et als.

Defendants.

CIVIL NO. 06-1316(JAG/BJM)

REPORT AND RECOMMENDATION

RE: SUPPLEMENTAL PETITION FOR ADJUDICATION OF CIVIL CONTEMPT

Plaintiff Elaine L. Chao (“plaintiff” or “Secretary”), the Secretary of the United States Department of Labor (“DOL”), filed a *Supplemental Petition for Adjudication of Civil Contempt* (Docket No. 50) against defendants SOS Security Services, Inc. (“SOS”) and SOS’s president, Edgardo Batiz Ramia, alleging that defendants have failed to comply with certain terms of this court’s orders (Docket No. 39, 42) adopting my previous Report and Recommendation (Docket No. 25) to find defendants in contempt by reason of their failure to comply with the terms of the Consent Judgment issued against them. Defendants opposed (Docket No. 50), and the Secretary replied. (Docket No. 59). This matter was referred to me for hearing and a report and recommendation. (Docket No. 58). Accordingly, a hearing was set for January 16, 2009. (Docket No. 62).

A few days before the hearing date, the parties jointly requested that the hearing be converted to a telephone status conference during which the parties would inform the court of agreements they had reached regarding the matters raised in the *Supplemental Petition*. (Docket No. 63). Consequently, I held a telephone status conference with counsel for the parties on the morning of January 16, 2009. During the conference, counsel requested that the court enter an order compelling the following terms on the defendants as a resolution to the *Supplemental Petition*:

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1. That by not later than **January 23, 2009**, defendants shall produce to the Caribbean District Office of the DOL's Wage and Hour Division an electronic back-up (on compact disk in Excel format) of pay stubs maintained in defendants' Peachtree Payroll System for the period of February 10, 2004 through the present;.
2. That defendants shall produce to the Caribbean District Office of DOL's Wage and Hour Division copies of time and attendance sheets filled by employees by not later than **January 30, 2009** for the period of August 2007 to the present, and by not later than **February 27, 2009** for the period of February 10, 2004 through August 2007;
3. That defendants shall pay a stipulated penalty of \$50.00 per day, per violation, for any failure to timely produce the information requested above; and
4. The foregoing stipulations are without prejudice to the Secretary's right to assess fines, penalties, or other liabilities against defendants arising from the violations of the Fair Labor Standards Act of 1938 ("FLSA"), as amended, 29 U.S.C. §§201, *et seq.*, or other law that may be adduced upon review of the documents and other information required to be produced by the defendants.

In view of the foregoing, I recommend that the parties' stipulations to resolve the *Supplemental Petition* (Docket No. 50) be approved, and that defendants be ordered to comply with the terms and deadlines set forth above.

The parties have ten (10) business days to file any objections to this report and recommendation. See Local Rule 72(d); 28 U.S.C. § 636(b)(1). Failure to file same within the specified time waives the right to appeal this order. Henley Drilling Co. v. McGee, 36 F.3d 143, 150-151 (1st Cir. 1994); United States v. Valencia, 792 F.2d 4, 6 (1st Cir. 1986); see also Paterson-Leitch Co. v. Mass. Mun. Wholesale Elec. Co., 840 F.2d 985, 991 (1st Cir. 1988) ("Systemic efficiencies would be frustrated and the magistrate's role reduced to that of a mere dress rehearsal if

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a party were allowed to feint and weave at the initial hearing, and save its knockout punch for the second round.”)

IT IS SO RECOMMENDED.

In San Juan, Puerto Rico, this 16th day of January, 2009.

S/Bruce J. McGiverin
BRUCE J. McGIVERIN
United States Magistrate Judge